

United States District Court

For the Northern District of California

10 *In re Malibu Media Copyright
11 Infringement Litigation*

12 No. C 15-04112 WHA
13 No. C 15-04159 WHA
14 No. C 15-04170 WHA
15 No. C 15-04287 WHA
16 No. C 15-04289 WHA
17 No. C 15-04291 WHA
18 No. C 15-04441 WHA
19 No. C 15-05383 WHA
20 No. C 15-05384 WHA
21 No. C 15-05385 WHA
22 No. C 15-05386 WHA
23 No. C 15-05387 WHA
24 No. C 15-05388 WHA
25 No. C 15-05389 WHA
26 No. C 15-05391 WHA
27 No. C 15-05395 WHA
28 No. C 15-05396 WHA
 No. C 15-05397 WHA
 No. C 15-05398 WHA
 No. C 15-05399 WHA
 No. C 15-05400 WHA
 No. C 15-05401 WHA
 No. C 15-05402 WHA
 No. C 15-05403 WHA
 No. C 15-05404 WHA
 No. C 15-05406 WHA
 No. C 15-05408 WHA
 No. C 15-05409 WHA
 No. C 15-05410 WHA
 No. C 15-05411 WHA
 No. C 15-05412 WHA
 No. C 15-05413 WHA
 No. C 15-06060 WHA
 No. C 15-06062 WHA
 No. C 15-06063 WHA
 No. C 15-06064 WHA
 No. C 15-06065 WHA
 No. C 15-06066 WHA
 No. C 15-06067 WHA

1 No. C 15-06068 WHA
2 No. C 15-06069 WHA
3 No. C 15-06070 WHA
4 No. C 15-06071 WHA
5 No. C 15-06072 WHA
6 No. C 15-06073 WHA
7 No. C 15-06074 WHA
8 No. C 15-06075 WHA

9

10 **ORDER RE PLAINTIFF'S
11 PROPOSED PROCEDURE FOR
12 EFFECTUATING SERVICE**

13

14 Plaintiff Malibu Media, LLC, has filed 116 copyright infringement actions in this
15 district. All of Malibu Media's actions have been reassigned to the undersigned judge. Malibu
16 Media has encountered difficulty effectuating service by the deadline set by Rule 4(m), which
17 has resulted in repeated requests for extensions and, in four cases, dismissal for failure to timely
18 serve the defendants (after two extensions had already been granted). Accordingly, Malibu
19 Media filed a request in Case No. 15-4287 proposing that the undersigned judge issue a
20 standing order extending the deadline to effectuate service to fifty-five days from the date on
21 which it receives the defendant's identifying information from his or her Internet provider for
22 all pending cases. Counsel for Malibu Media appeared for a hearing to discuss this proposal on
23 February 23.

24 As a matter of course, the deadline to effectuate service has been extended to at least
25 twenty-eight days from the date on which Malibu Media received the defendant's identifying
26 information. Two extensions of two weeks each have been granted upon request and a showing
27 of good cause. In one case, the deadline was extended a third time where the defendant
28 appeared to be dodging service.

Malibu Media explains that the initial twenty-eight days does not offer sufficient time to
effectuate service, inasmuch as it takes twenty days from the date on which it receives a given
defendant's identifying information before it can deliver the necessary documents and

1 instructions to a process server. Specifically, Malibu Media outlines the following procedure
2 that it follows upon receipt of a defendant's identifying information:

- 3 ● Malibu Media conducts an investigation, typically lasting **THREE**
4 **DAYS**, to determine whether it will pursue its claims against the
5 subscriber identified or a third party using that subscriber's Internet
6 connection.
- 7 ● Once Malibu Media decides to pursue claims against a defendant, it
8 takes **THREE DAYS** to prepare and file a proposed summons,
9 amended complaint, return of service, and a motion to file those
10 documents under seal.
- 11 ● Malibu Media's sealing motion is granted within **ONE DAY**.
- 12 ● The summons issues between **TWO AND SIX DAYS** after the sealing
13 motion is granted.
- 14 ● Malibu Media receives the unredacted summons by mail **FOUR TO**
15 **TEN DAYS** after it issues.
- 16 ● Malibu Media spends **ONE DAY** reviewing the relevant documents
17 before delivering them to its process server.

18 In light of this time-consuming procedure, Malibu Media seeks to alleviate the
19 administrative burden of repeatedly requesting extensions; however, Malibu Media exaggerates
20 the timeline of its procedure.

21 *First*, Malibu Media offers no explanation for why it needs three days to prepare and file
22 its proposed summons, amended complaint, return of service, and sealing motion. The
23 preparation of those documents involves little more than adding the defendant's identifying
24 information to documents that Malibu Media had already created before receiving that
25 information. Even if Malibu Media actually needed three days to prepare those documents
26 (plus three to conduct its investigation), it generally files its sealing motions more than ten days
27 after receiving defendants' identifying information.

28 *Second*, in no case has the summons issued more than one day after Malibu Media's
29 sealing motion is granted.

30 *Third*, as noted in the orders dismissing four of Malibu Media's cases (Case Nos. 15-
31 4246, 15-4248, 15-4280, and 15-4430), and as discussed at the hearing on this request, Malibu
32 Media's lead counsel (who are based in Los Angeles) or local associated counsel, may retrieve
33 the summons and other documents from the process server.

1 any unredacted summonses in person at the Clerk's office on the 16th floor of 450 Golden Gate
2 Ave., San Francisco. Thus, any delay caused by the mailing of unredacted summonses is easily
3 avoided.

4 Accordingly, Malibu Media only needs eight to ten days from the date it receives a
5 defendant's identifying information before it can deliver the relevant documents and
6 instructions to its process server. Nevertheless, notwithstanding the deadline set by Rule 4(m),
7 Malibu Media shall have thirty-five days from the date on which it receives the defendant's
8 identifying information from the his or her Internet service effectuate service.

9 Requests for extensions beyond thirty-five days (or beyond the deadline set by Rule
10 4(m) if longer than thirty-five days) will be decided on a case-by-case basis and must be
11 supported by good cause. Any such request should be made immediately as circumstances
12 justifying the extension arise, rather than at the last minute. Malibu Media must support any
13 assertion that a defendant is dodging service with an affidavit of non-service (to be filed under
14 seal, with the defendant's identifying information redacted on the public docket).

15 In order to better track deadlines, Malibu Media shall please file a notice informing the
16 Court of the date on which it received the defendant's identifying information no later than **FIVE**
17 **CALENDAR DAYS** after receiving that information.

18 This order shall be filed in every pending Malibu Media case in this district in which the
19 defendant has not yet been served. As discussed at the hearing, Malibu Media shall please file
20 the transcript of the February 23 hearing in each of the above-captioned matters.

21

22 **IT IS SO ORDERED.**

23

24 Dated: February 23, 2016.

25

26

27

28


WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE